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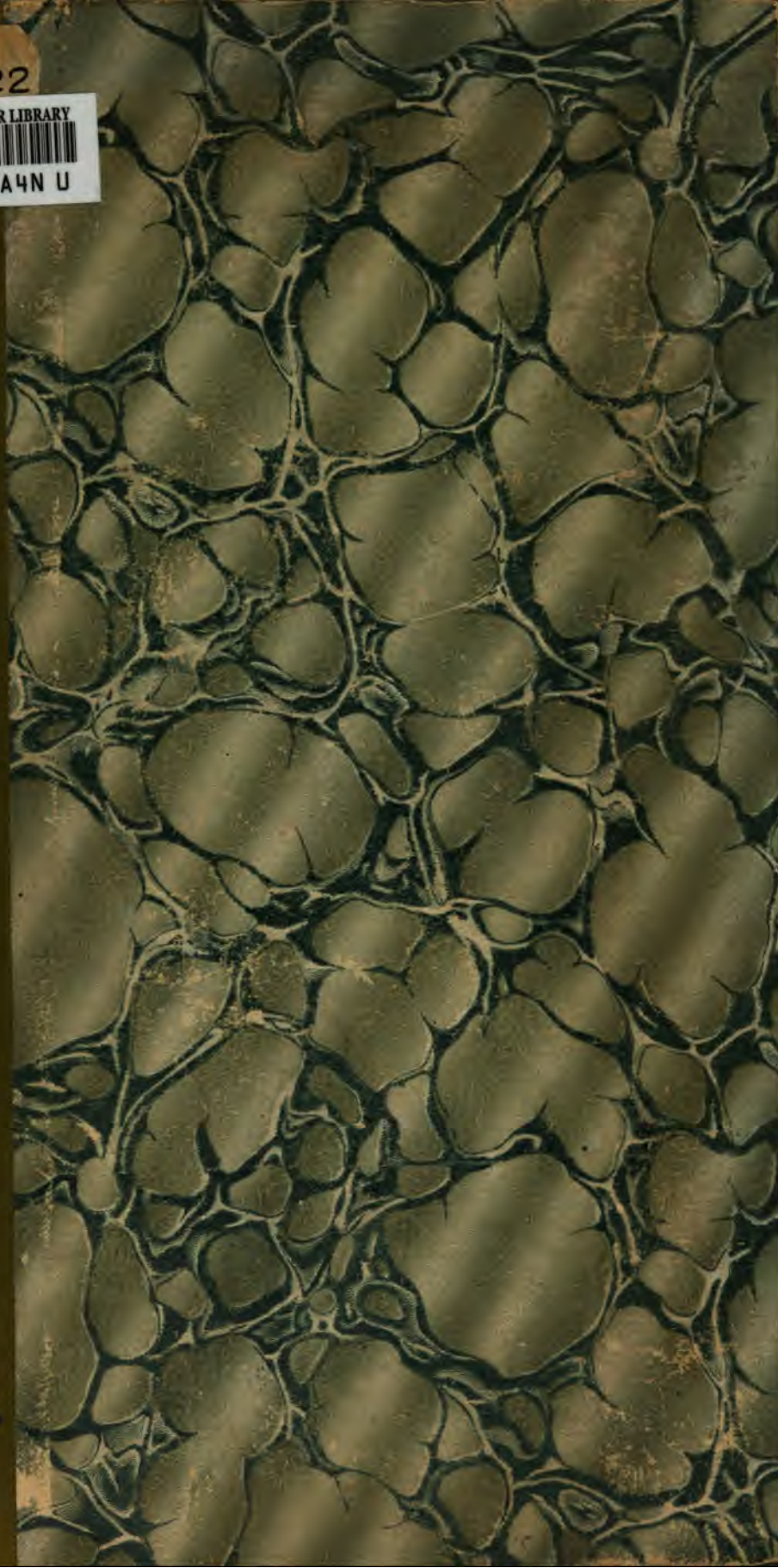
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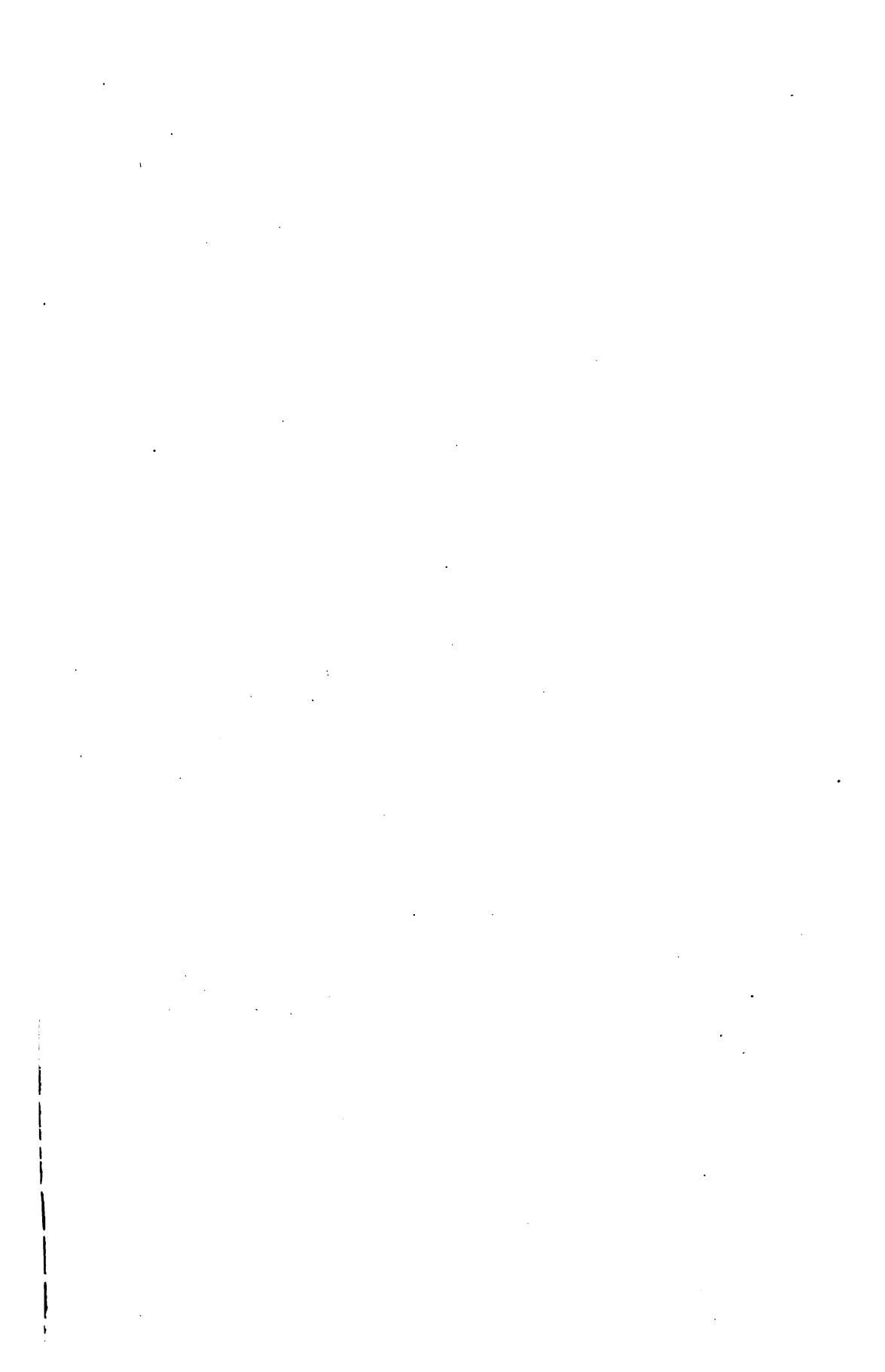


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THE
ELECTIVE FRANCHISE:

AN ARGUMENT BY THE

HON. ABRAHAM PAYNE,

FOR A

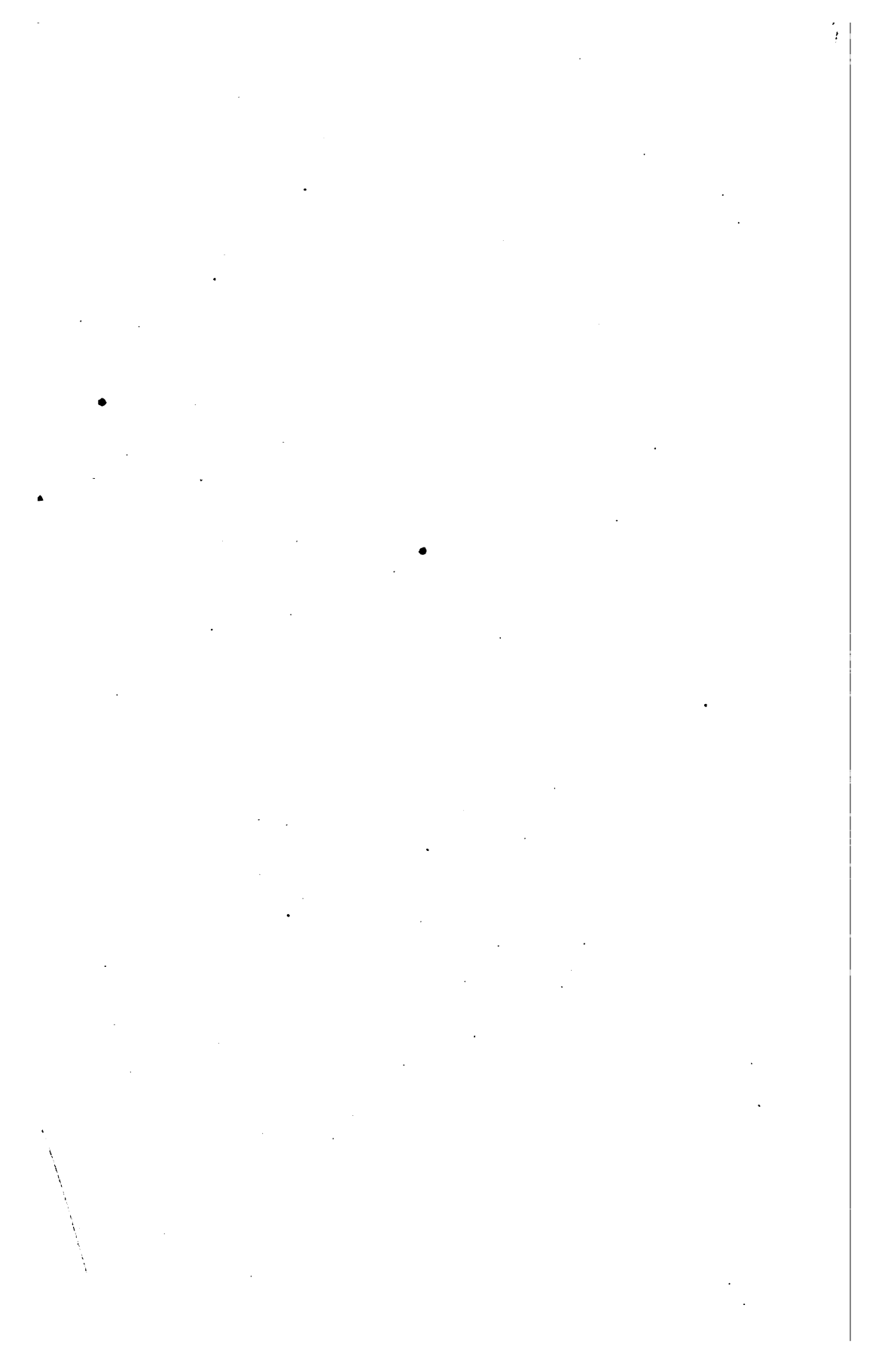
CONSTITUTIONAL CONVENTION.

DELIVERED AT A MEETING OF THE

EQUAL RIGHTS ASSOCIATION,

JANUARY 12, 1882.

PROVIDENCE:
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ADDRESS.

More than forty years since, the supreme court of Rhode Island, under circumstances which made it their duty to do so, declared by its chief justice, with the concurrence of every member of the court, in a charge to the grand jury, what were the constitution, functions and authority of a state of this union.

Some years later, Daniel Webster, acting as counsel for Rhode Island in the supreme court of the United States, gave what he called the "ancestry, pedigree and history of American liberty."

In maintaining that an act of the general assembly inviting the qualified electors of the state, assembled by delegates in a convention, to frame a constitution to be submitted to the people for their approval, would be a lawful proceeding, I shall rely upon these authorities, using, when I refer to them, their exact language.

Inquiries into the origin of government lose themselves in abstractions, as inquiries into the origin of the race lose themselves in the twilight of fable.

It might be difficult to trace the origin and history of that theory of government which makes the people the source of political power, but there can be no doubt that, at the time of the declaration of independence, it was the traditional and settled conviction of the people of these colonies.

Right or wrong, it is the theory upon which the government of the states of this union are constructed and maintained.

Mr. Webster says: "No man makes a question that the people are the source of all political power. Government is instituted for their good, and its members are their agents and servants. He who would argue against this must argue without an adversary."

Who are the people? Chief Justice Durfee, in the charge to which I have referred, says: "The first duty which every person residing within the jurisdiction of the state owes to it is that of allegiance. It begins with infancy at the mother's breast—and if he continues an inhabitant or citizen of the state, it terminates only with the last breath which delivers the spirit over to its final account. Allegiance is a duty on an implied contract—often, however, sanctioned by an oath, but none the less sacred in the absence of the oath—that so long as any one receives protection from the state, so long will he demean himself faithfully and support the state."

These are the people who are the source of political power.

This power is exercised by agents delegated by the authority and in the forms of law, and can be exercised in no other way.

Chief Justice Durfee, in the charge referred to, says: "It would be preposterous to call a mere collection of individuals within certain limits, a state. Regarded as a mere aggregate, they are still without unity, and have nothing whereby to bind them together, and enable them to act as an organized whole. No treaty can be made with them; no law can be enacted by them. Think ye that it is the mere rulers, or those who have the legislative and executive power in their hands? This, indeed, comes something nearer to our idea of a state; and when we look upon governments abroad, we may look no farther; but surely this does not make a state here at home, under the constitution of the United States. Here we must not only find a government, but a people so bound together, colligated and organized by law, as to appoint rulers and to reduce the innumerable wills of the multitude to a legal unit. I think I give a true description of a state, when I say that a state is a legally organized people, subsisting as such from generation to generation without end, giving, through the forms of law, the wills of the many, to become one sovereign will. It is a body politic, qualified to exist by perpetual succession and accession."

Mr. Webster says: "The aggregate community is sovereign, but that is not the sovereignty which acts in the daily exercise of sovereign power. The people cannot act daily as the people. They must establish a government, and invest it with so much of the sovereign power as the case requires, and this sovereign power being delegated and placed in the hands of the government, that government becomes what is popularly called the state. I like the old fashioned way of stating things as they are; and this is the true idea of a state. It is an organized government representing the collected will of the people, as far as they see fit to invest the government with power."

How can the people, the source of political power, change the government? That is to say limit, enlarge or modify the powers of their agents. Clearly: by expressing their will to do so by the authority and under the forms of previous law. Chief Justice Durfee, in the charge referred to, says: "This corporate people, while it exists, may, of its own will and through the forms of law which it prescribes by its legislature, put on as many different forms of government, not conflicting with the constitution of the union, as it chooses. Its power for that purpose is ample, unquestionable."

Mr. Webster says: "In the exercise of political power through representatives we know nothing, we never have known anything, but such an exercise as should take place through the prescribed forms of law. When we depart from that we shall wander as widely from the American track, as the pole is from the track of the sun."

In the exercise of this power the people may limit their agents by the provisions of their constitution, or fundamental law, and they may limit themselves, in the same way, "to secure the institutions which they establish against the sudden impulses of mere majorities."

This they do when they provide in their constitution for the mode in which special amendments may be made in what is known as the fundamental law. But they do not, and they cannot, abdicate their power to assemble, under

authority of law, in convention by delegates to consider a revision of the fundamental law, to be submitted to them for their final approval.

If, as in the present constitution of Rhode Island, a mode is provided for its special amendment, requiring a vote of three fifths of the qualified electors, all changes must be made in that way; then for all time the people must live under a government of two-fifths of those electors qualified by the provisions of their present constitution.

While it is proper to place safe-guards against the "sudden impulses of mere majorities," it is clear that the only way in which the permanent will of the people can be ascertained is by the voice of the majority. Abraham Lincoln says: "A government by a minority is either anarchy or despotism."

It has been suggested that the members of the general assembly, having taken an oath to support the constitution, cannot, without a violation of their oath, vote to invite the people to hold a convention. But this cannot be so; if their oath requires them to support the constitution as it is, they could not vote to propose an amendment, according to its provisions. They may, without a violation of their oaths, vote to change the constitution in any lawful way, and we come back to the question whether the proposed convention would be lawful. Constitutional questions are fertile in differences of opinion, but I think it will be difficult to produce judicial or legislative authority that it is unlawful for the legislature of a state of this union to invite its qualified electors to assemble by delegates in convention to frame a constitution to be submitted to the people for their approval. It will be in order to consider such authority when it is produced.

But we are dealing with Rhode Island history and Rhode Island law.

Both before and since the adoption of the present constitution, the general assembly has passed such acts as the one now proposed. The constitution reserves to the general assembly all the powers theretofore exercised, and without such reservation this power exists.

The whole proceeding is orderly and conservative. The general assembly invites the qualified electors to send delegates to a convention. The electors accept or decline the invitation. If they decline there will be no convention. If they accept, the convention will frame a constitution and submit it to the people for their approval. If they do not approve there is an end. If they do approve, the proposed constitution becomes that fundamental law deriving its authority from their approval.

But ought the general assembly to invite a convention at this time? I think so.

Mr. Webster says: "Another American principle growing out of this, and just as important and well settled as is the truth that the people are the source of power, is that where, in the course of events, it becomes necessary to ascertain the will of the people on a new exigency, or a new state of things or of opinion, the legislative power provides for that ascertainment by an ordinary act of legislation."

I think the "new exigency" and the "new state of things" has arrived here.

The present constitution was adopted more than forty years since. The people have observed its practical operation for more than a generation. Many changes have taken place and new questions have arisen. This is not the time and place to discuss or settle these questions. We have now to inquire whether they are of such importance as to make it expedient to submit them to the people for their consideration and action. I will indicate some of these questions.

1st.—Should the registry tax be abolished?

2d.—Should suffrage be given to foreign-born citizens upon the same terms as to natives?

3d.—Should suffrage be extended to women upon the same terms as to men?

4th.—Should Providence have an increased representation in the general assembly?

There are other questions, of equal importance perhaps, but not so prominent in the public mind, involving the limits

of taxation for the purposes of education ; the purposes for which the general assembly may authorize the expenditure of money ; the mode of creating corporations, and defining their powers and liabilities ; the exemption of property from taxation.

We shall all concede that these questions are important, but some may say there is no evidence of such a diversity of opinion as to justify a convention. To this I reply, there is evidence of diversity of opinion ; how general it is can only be ascertained, after full discussion by the action of the people.

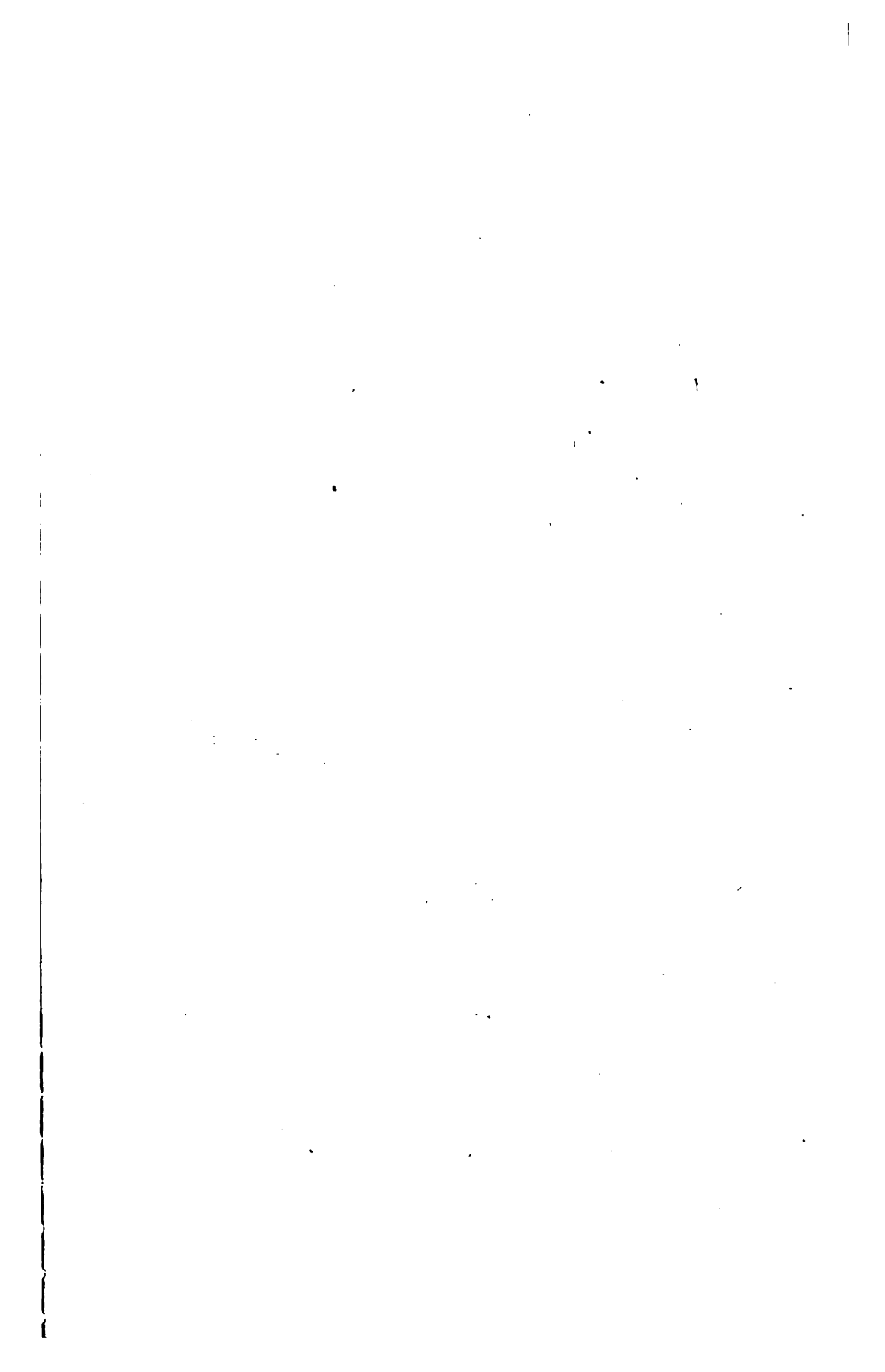
There are many people who think the suffrage should be made equal. There are many people who think the representation of Providence should be increased. Let the proposed act be passed and the people can promptly decide these questions for themselves. Refuse to pass this act and you have a large class of people feeling that they have been denied a fair hearing, and are suffering injustice. Is it not desirable to avoid this by an appeal to the tribunal to whose decision all will cheerfully submit?

Communities have long lives but short memories. May I quote in conclusion a sentence from the argument of Mr. Webster in defense of Rhode Island, before the supreme court of the United States?

"I might have said that I see nothing to complain of in the proceedings of what is called the charter government of Rhode Island, except that it might perhaps have discreetly taken measures at an earlier period for revising the constitution. If in that delay it erred, it was the error into which prudent and cautious men would fall."

Possibly prudent and cautious men might discreetly avoid in 1882 an error which their illustrious defender felt called upon to suggest in their conduct in 1842.





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